

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)	
Own Motion into Mobile Telephone)	I.93-12-007
Service and Wireless Communications.)	

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING
MOTION FOR MODIFICATION OF JULY 19, 1994 RULING**

Administrative Law Judge (ALJ) ruling of July 19, 1994 granted the motions, in part, for confidential treatment of data submitted by certain cellular carriers (respondents)¹ in response to ALJ data requests in this proceeding. The ruling directed respondents to provide the confidential data to the Cellular Resellers Association (CRA) under a nondisclosure agreement.

On July 26 and 27, 1994, additional motions were filed by certain of the respondents requesting modification or clarification of the July 19 ALJ ruling. Still concerned over publicly disclosing certain data which the July 19 ruling deemed to be nonconfidential, certain respondents redacted the information described in Categories 1(b)(1), (2), and (3) on page 6 of the ruling from the copy provided to CRA. Categories 1(b)(1) and (2) concern data on the number of aggregate subscribers on each carrier's discount plans and basic rate plans, respectively. Category 1(b)(3) concern the number of aggregate subscribers of the company in total, broken down between wholesale and retail service.

The July 19 ruling designated this data nonconfidential since it disclosed only aggregate subscriber numbers, but not customer numbers on any single discount plan. Thus, competitors

¹ Respondents filing separate motions include AirTouch Cellular (AirTouch), Bay Area Cellular Telephone Company (BACTC) McCaw Cellular Communications (McCaw), and US West Cellular (US West). Respondents filing joint include GTE Mobilenet (GTE), Fresno MSA, Contel Cellular, and California RSA No. 4.

would not be able to learn which particular discount plan(s) were more popular with subscribers with the intent of emulating them for competitive advantage. In lieu of disclosing this information, the respondents filed motions for modification of the ruling. The procedure for filing the motions was approved by the ALJ by phone call with certain carriers' representatives prior to the motions being filed.

On July 29, an interim ruling was issued temporarily staying the portions of the July 19 ruling for which respondents sought reconsideration, pending an opportunity for comment by other parties by August 3, 1994. The July 19 ruling also directed public disclosure of the percentages--as opposed to specific numbers of customers--applicable to the various categories of data cited in parties' motions. This ruling grants the motions of the respondents for reconsideration, as noted below.

Positions of Parties

Respondents request that the Commission treat the information in categories 1(b)(1), (2), and (3) of the July 19 ruling as confidential, and that the ruling be revised accordingly. Respondents argue that if this data is not kept confidential, competitors will have sufficient information to fully and accurately calculate the market share of the respondent providing the data, and use such information to the competitive harm of the party providing the data.

Although the July 19 ruling provided for only the number of aggregate subscribers to be publicly disclosed, respondents contend that even the types of aggregate data called for by the ALJ ruling are of so specific as to render them very valuable to competitors who could use them to analyze the carrier's business operations. Disclosure of such information to competitors would allow them to tailor their marketing plans in response to the carrier's subscribership pattern. A competitor may also structure an advertising sales message claiming superiority over the carrier

based on total subscribers or number of subscribers by a specific customer segment or growth rate of total subscribers.

On August 3, two parties, Cellular Carriers' Association of California (CCAC) and CRA filed responses to the July 26/27 motions. CCAC supports respondents' motions. CCAC contends that any inadequate showing of competitive harm in the initial motions has since been remedied by the justifications provided in the motions for modification. According to CCAC, "imminent and direct harm" would result from disclosure of the disputed customer information to competitors who could then use it to tailor their own discount plans and marketing strategies accordingly. CCAC asserts that no competitor should be compelled to divulge to its competition what amounts to a blue print of its subscriber area strengths and weaknesses. CCAC also disputes that public disclosure of the disputed data promotes a "fully open regulatory process" since only cellular carriers--and not other wireless service providers--are being compelled to disclose sensitive data. CCAC submits that it is unfair to require such disclosure from some providers and not others, and that compelling such disclosure will compromise the healthy competition which the Commission seeks to foster.

CRA opposes the motions for modification of the July 19 ALJ ruling, and argues that there has been no showing of "imminent and direct harm of major consequence" from disclosure of the data. CRA observes that not all the carriers have objected to provide the requested data in aggregate form. For example, California RSA #2 provided the data to CRA without complaint. Likewise, Los Angeles Cellular Telephone Company (LACTC) did not object to providing the noted data. CRA also disputes, in particular, US West's claims of competitive harm, noting that US West has announced a joint venture with its San Diego duopoly competitor, AirTouch. CRA also contends that mere knowledge of aggregated subscriber information would not be usable by competitors to gain any advantage over carrier making

the disclosure since the subscriber would not know which plans subscribers are utilizing.

Discussion

As stated in the earlier July 19 ruling, the standard for ruling on parties' motions for confidential treatment is whether public disclosure would cause "imminent and direct harm of major consequence." The risk of such harm is to be balanced with "the public interest of having an open and credible regulatory process." (In Re Pacific Bell 20 CAL PUC 237, 252). Examples of information considered to cause such harm includes customer lists, prospective marketing strategies, and true trade secrets.

It is concluded that based on the additional explanation presented by respondents, in their motions of July 26/27, the data referenced in categories 1(b)(1), (2), and (3) of the July 19, 1994 ALJ ruling should be restricted from public disclosure and treated confidentially. Parties may still obtain access to this confidential data, but only through execution of an appropriate nondisclosure agreement.

As explained by the July 26/27 motions, however, the problem of significant competitive harm is not eliminated merely by requiring the data to be disclosed in the aggregate. Even though in aggregate form, the disclosure of absolute numbers would still reveal the relative market shares of each respondent in each of the service areas identified in the original ALJ data request. Knowledge of market share could be used by a competitor to structure an advertising message claiming superiority over the carrier, based on total subscribers. If a competitor knew a carrier's specific number of subscribers by market area applicable to the various categories referenced in the July 19 ruling, it could assess the carrier's strengths and weaknesses and adjust its marketing strategy accordingly.

The only party to file an objection to respondents' motions was CRA. As one reason for its objection, CRA cites the

fact that at least two carriers, California RSA #2, Inc. and LACTC did not object to providing the data on aggregate numbers of customers. The willingness of these carriers to publicly disclose the data for their own operations does not, of itself, prove that similar disclosure by other carriers would not cause them competitive harm. The basis for deciding the motions at issue are the claims of competitive harm that would result for those carriers who did file motions. There is no basis to speculate regarding why other carriers chose for whatever reason not to object to releasing various forms of data. On this basis of the filed motions, the carriers have provided adequate justification.

CRA also cites the announcement of a joint venture between US West and its only duopoly competitor, AirTouch as additional evidence justifying public disclosure of the data. According to CRA, US West's position amounts to nothing less than AirTouch can have this competitive information, but the public or any other competitor cannot. Thus, CRA appears to concede that the information has competitive value, but seeks to have it publicly disclosed anyway so all prospective competitors can have equal opportunity to competitively benefit from the information, not just AirTouch. By advancing this argument, CRA actually lends credence to carriers' arguments that the data does, in fact, have commercially sensitive value to competitors. The fact that US West voluntarily decides to share certain data with AirTouch in connection with a joint venture is its proprietary right. It does not follow that US West should be required to disclose commercially sensitive data to other competitors with whom it has no joint venture interests.

As a final argument, CRA claims that since the data would only disclose aggregated numbers, it cannot be construed to be a "trade secret." Since the aggregated data would not disclose which billing plans a subscriber utilized, CRA argues that a competitor would not be able to use the data for competitive gain.

Yet, the additional arguments presented by the carriers show that there is an economic value in knowledge of the aggregate number of subscribers to the extent it indicates a carrier's market share in particular market areas and total number of subscribers on discount plans in given market areas. Such information can be reasonably classified as "trade secrets." As defined under the Uniform Trade Secrets Act, codified in the California Civil Code, § 3426 et seq., a "trade secret" is:

"informationthat derives independent economic value, actual or potential, from not being generally known to the public...and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Accordingly, to the extent the information on numbers of subscribers has significant economic value to competitors, it can properly be considered as "trade secrets" under the Uniform Trade Secrets Act. In the interests of promoting a more competitive market, carriers should be allowed to protect the confidentiality of such competitively sensitive information.

**Procedures for Third-Party Access
to Carriers' Data Responses**

In its motion, BACTC also requests that the Commission clarify the procedure to be followed for making non-confidential data available to the public while preserving the confidentiality of information deemed proprietary under General Order (GO) 66-C. BACTC notes that although the ALJ ruling establishes a procedure to provide the publicly available information in the data request to CRA, no procedure was explained whereby the non-confidential data is to be made available to other parties. BACTC proposes that all data produced in response to the ALJ rulings of April 11, 1994 and April 22, 1994 be physically segregated from the public documents in the formal proceeding files. BACTC also proposes that parties go through the respective carriers to request access to the data responses.

No other party commented on BACTC's proposal as to procedures for Commission custody of the data, and third-party access. BACTC's request for clarification of procedures for providing data to third parties is addressed in the ruling below.

IT IS RULED that:

1. The motions of the respondents to modify the July 19, 1994 ruling are granted with respect to the confidentiality of information designated as categories 1(b)(1) (2), and (3) in the July 19 ruling as described above.

2. The July 19, 1994 ruling is revised as follows: The information on aggregate numbers of subscribers indicated in categories 1(b)(1), (2), and (3) of the ruling shall be subject to the confidentiality provisions of GO 66-C and Public Utilities Code § 583, applicable to those respondents filing motions for reconsideration.

3. This confidential information shall be provided to CRA pursuant to the nondisclosure agreement as explained in the July 19 ruling.

4. Any party, other than CRA, interested in obtaining a copy of the redacted version of the data responses provided by the carriers in this proceeding shall directly contact the respective carriers to obtain such copies, not Commission staff.

5. The carriers shall promptly provide to any party who makes a specific request, a copy of all redacted data responses produced by carriers in this proceeding.

6. Any party, other than CRA, interested in obtaining a copy of the unredacted confidential version of the data responses provided by the carriers in this proceeding shall do so by contacting the respective carriers and executing a nondisclosure agreement as prescribed in the July 19 ruling. Confidential copies shall not be available through the Commission.

Dated August 8, 1994, at San Francisco, California.

/s/ THOMAS R. PULSIFER
Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion for Modification of July 19, 1994 Ruling on all parties of record in this proceeding or their attorneys of record.

Dated August 8, 1994, at San Francisco, California.

/s/ GABRIELLE NGUYEN
Gabrielle Nguyen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number of the service list on which your name appears.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
Own Motion into Mobile Telephone) I.93-12-007
Service and Wireless Communications.) (Filed December 17, 1993)

ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION FOR PUBLIC DISCLOSURE OF DATA

On July 26, 1994, the Cellular Resellers Association, Inc. (CRA) filed a motion to compel public disclosure of the underlying data previously provided by the Cellular Carriers Association of California (CCAC) to the Commission on a confidential basis pursuant to an April 11, 1994 administrative law judge (ALJ) ruling. CCAC had been directed to provide additional information to the Commission which was used to support assertions in CCAC's comments filed in this proceeding that average rates under the optimal retail rate plans of CCAC members decreased since 1990.

Thereafter, CRA requested that the data provided the Commission also be provided to CRA for its review. CCAC provided CRA a copy of the underlying data provided pursuant to the April 11 ALJ ruling on a confidential basis under a nondisclosure agreement. Upon review of the data response provided by CCAC, CRA states that it could find no confidential data identified therein warranting nondisclosure to the public. In a subsequent telephone conference call, CCAC told CRA that the rate data presented in the data response had been procured from its member carriers in a manner which could raise antitrust liability implications if price data were not kept confidential. Thus, CCAC refused to agree to public release of the data marked "confidential" except for the first two pages which indicate (a) the "Assumptions underlying CCAC Results," and (b) the cellular carriers responding to CCAC's survey. CRA

attached these two pages to its motion. Since it disputed CCAC's interpretation of confidentiality for the remaining pages, CRA filed its motion on July 26 for public disclosure of the data.

On August 10, 1994, CCAC filed a response in opposition to the CRA motion for public disclosure. On August 29, 1994, CRA filed a third-round pleading in reply to CCAC, and attached a request to file the reply. CRA argues that third-round pleadings are allowed by the Commission, upon request, if they address matters raised in responses, as its pleading does. On August 31, 1994, CCAC sent a letter to the ALJ stating its opposition to the CRA's request for a third-round pleading. CCAC argues that the CRA third-round pleading adds nothing to the Commission's consideration of the underlying issue.

In the interests of a complete understanding of parties positions, CRA's reply to CCAC's response will be accepted and considered. Likewise, the response of CCAC in its letter of August 31, 1994 to CRA's third-round pleading is also taken into account.

Positions of Parties

CRA moves to compel the public disclosure of the underlying data used by CCAC to support its assertions that retail cellular rates of its members have decreased. CRA argues that the rate data provided by CCAC fails to meet the standard for nondisclosure of confidential data prescribed in Decision (D.) 86-01-026 that the risk of "imminent and direct harm of major consequence" be balanced with "the public interest of having an open and credible regulatory process." (In Re Pacific Bell, 20 CAL PUC 237, 252.)

CRA states that the data used by CCAC is not based on any subscriber-specific data for any member carrier, but is developed using various undisclosed usage volumes which are not shown to be based on actual usage. The rate plans are then segregated by market size and averaged on a straight line basis. Arguing that

CCAC's data manipulation yields contrived rates which are not real, but only theoretical "optimal rate plans," CRA disputes that disclosure would be of value to competitors. Accordingly, CRA contends that public disclosure of the data underlying the CCAC study will not cause imminent or direct harm to the member carriers of CCAC that outweighs the public interest of having an open and credible regulatory process.

CCAC opposes CRA's motion. The data which CRA seeks to disclose represents the research and conclusions of CCAC's consultants as to the optimal rate plans of individual CCAC members. CCAC contends that public disclosure of such data would significantly damage the competitive interests of its members. CCAC contends that such data constitutes a trade secret, as defined by the California Trade Secrets Act. CCAC contends that its consultant study derives commercial value from not being publicly disclosed. Competitors could otherwise discover the CCAC consultants' opinion as to the optimal rate plans of the CCAC members included in the study. A competitor could then use this information to the disadvantage of the member carrier by targeting its marketing strategies toward certain market segments based on the carrier's optimal rate plan.

CCAC states that it has made every reasonable effort to maintain the secrecy of its study, providing the unredacted proprietary data only to the Commission and to CRA pursuant to a non-disclosure agreement. CCAC considers itself ethically and legally bound not to publicly disclose any information which could be competitively harmful to its members.¹

¹ See Business and Professions Code Sec. 16700, et seq. See also Cellular Plus, Inc. v. Superior Court, (App. 4 Dist. 1993) 18 CAL RPTR. 2d 308. For applicability of antitrust laws to trade association activities, see Maple Flooring Assn. v. United States 268 U.S. 563, 585, 1945.

CCAC also disputes CRA's argument that the Pacific Bell (PacBell) decision is a relevant standard upon which to decide CRA's motion. CCAC contends that the PacBell standard applies to public utilities. In contrast to its individual members, CCAC emphasizes that it is a trade association, and not a public utility. As such, CCAC contends that it is not its place to disclose information regarding an individual member of its association. Yet even if the PacBell standard is deemed to apply, CCAC believes that its data would warrant confidential treatment under that standard. CCAC notes that under the PacBell standard, true trade secrets are considered to qualify as confidential and proprietary data.

Discussion

The appropriate standard for ruling upon CRA's motion is that enunciated in the PacBell decision cited by CRA. CCAC's claim is rejected that the PacBell standard for nondisclosure is not applicable to CRA's motion because CCAC is not a public utility. CCAC argues that since it is a trade association that voluntarily participates in the Commission's regulatory process, it is not in a position to disclose information regarding an individual member of its association. This line of reasoning offers no basis to deny CRA's motion to compel public disclosure. An entity otherwise bound by Commission rulings cannot circumvent compliance with such rulings under the veil of trade association protection. As a practical matter, the individual carriers could be separately ordered to disclose the data from the CCAC study for their own respective rate plans independently of CCAC. In any event, the PacBell standard is applicable in the case of the CCAC study.

Under the PacBell standard, "in balancing the public interest of having an open and credible regulatory process against the desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process." Accordingly, confidential treatment may be granted only upon a

showing by CCAC that disclosure of its study would lead to "imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental." (Id. 252.) Examples of data for which confidentiality may be appropriate under the PacBell standard are customer lists, true trade secrets, and prospective marketing strategies.

CCAC asserts that the underlying data in its study constitutes a trade secret warranting confidential treatment. As defined by the California Trade Secrets Act,

"Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- "(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- "(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."²

Based on this definition, CCAC has adequately shown that its study constitutes a "trade secret." The CCAC study incorporates a "compilation" of optimal rate plans based upon the evaluation of CCAC's consultant, as developed from publicly available cellular rate data. The mere fact that the study was compiled from publicly available data does not negate its status as a trade secret. As pointed out by CCAC, the California legislature, in drafting California's Trade Secrets Act, concluded that: "...information can be a trade secret even though it is readily ascertainable, so long as it has not yet been ascertained by others in the industry." (286 CAL. RPTR. at 529.)

² Civil Code, Sec. 3426.1, subdiv. (d).

Likewise, the fact that the data was averaged and segregated by market size does not eliminate the competitively sensitive nature of the underlying data. The feature of the CCAC study which makes it competitively sensitive is not the aggregate public rate data from which it was drawn, but rather its conclusions regarding which rate plans are "optimal" for a given carrier and market. It is the disclosure of the underlying comparisons of optimal rate plans of companies in the same market that has competitive value. Knowledge of a given carrier's optimal rate plan as disclosed in the CCAC study could be used by a competitor to redirect marketing strategies toward certain market segments based upon the effectiveness of the carrier's marketing strategy. In so doing, a competitor could derive economic value from such knowledge to the detriment of the carrier forced to make disclosure. Accordingly, such data meets the criteria for a "trade secret" as prescribed in the California Trade Secrets Act, and justifies confidential treatment under the "competitive harm" standard in PacBell.

CRA claims that the CCAC study could not be useful to competitors as a "trade secret" because the study's "optimal rate plans" are "not real rate plans." But the fact that the CCAC rate study is based upon "developed rates" which exclude activation charges does not determine whether the study constitutes competitively sensitive trade secret information. CRA's criticisms over the validity of CCAC's "developed rate" methodology in arriving at its conclusions pertain to the substantive merits of the study. While the validity of the underlying methodology is relevant in assigning evidentiary weight to the CCAC study, it is not relevant in ruling on whether the study, itself, constitutes a trade secret.

For these reasons, CCAC will not be compelled to publicly disclose the confidential portions of its study. Parties may still obtain confidential copies of the unredacted study from CCAC for

review, but must do so under a nondisclosure agreement. This procedure was previously described in the ALJ ruling of August 8, 1994, Ordering Paragraph 6. This approach provides an appropriate balance between the need to encourage public involvement in Commission proceedings versus the need to protect sensitive proprietary data with commercial value to competitors.

IT IS RULED that:

1. The motion of the Cellular Resellers Association (CRA) is denied to compel public disclosure of the data submitted by the Cellular Carriers Association of California (CCAC) pursuant to the ruling of April 11, 1994.

2. Any party, in addition to CRA, interested in obtaining a copy of the unredacted confidential version of the CCAC study shall do so by contacting CCAC and executing a nondisclosure agreement as prescribed in the July 19 ruling.

Dated September 14, 1994, at San Francisco, California.

/s/ THOMAS R. PULISFER
Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion for Public Disclosure of Data on all parties of record in this proceeding or their attorneys of record.

Dated September 14, 1994, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number of the service list on which your name appears.

A P P E N D I X B

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 13, 1994

VIA FEDERAL EXPRESS

Regina Harrison
Private Radio Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

RECEIVED

SEP 27 1994

Re: PR File No. 94-SP3

Dear Ms. Harrison:

FCC MAIL ROOM

On September 9, 1994, you requested that the California Public Utilities Commission ("CPUC") provide additional information in connection with its Request for Proprietary Treatment of Documents Used In Support of Petition To Retain Regulatory Authority Over Intrastate Cellular Service Rates ("Request for Proprietary Treatment"), filed in conjunction with its petition in the above-referenced docket. This letter and attached enclosures are provided in response to that request.

First, per your request, we have referenced those portions of the CPUC's Petition to Retain State Regulatory Authority Over Intrastate Cellular Service Rates which correspond to the particular exemption under Section 0.457 of the Rules and Regulations of the Federal Communications Commission ("FCC"), 47 C.F.R. §0.457 asserted by the CPUC in its Request for Proprietary Treatment:

Specifically, on pages 29-34, 40-41, 51-54 and in Appendices E, F, H, J and M, the CPUC invoked Section 0.457(d)(2)(i) which provides that materials may be submitted under a request for nondisclosure if they contain "commercial, financial or technical data which would customarily be guarded from competitors." The CPUC also has invoked Section 0.457 which provides that certain materials may be specifically exempted from disclosure under statute.

As the CPUC explained in its Request for Proprietary Treatment, the data redacted on these pages and appendices was provided by the cellular industry to the CPUC based on claims that such data was commercially sensitive and hence, proprietary. Accordingly, in compliance with Section 583 of the Public Utilities Code and the CPUC's General Order 66-C, the administrative law judge in the CPUC's Investigation ("I.") 93-12-007, Wireless OII, treated this data as confidential until further order of the CPUC.

We have enclosed copies of two administrative law judge ("ALJ") rulings in I. 93-12-007 which adopted a nondisclosure agreement arrangement under which parties to the proceeding are permitted to review materials and data submitted by the cellular carriers on a confidential basis to the CPUC. The ALJ rulings are subject to a final determination by the CPUC whether public disclosure of such materials is in the public interest in accordance with Section 583 of the Public Utilities Code. We have provided a copy of Section 583 for your reference.

As we indicated to you, the CPUC itself has no independent interest in continuing to treat this data as confidential. However, in an abundance of caution, in filing its petition with the FCC, the CPUC submitted this data under seal on the grounds asserted by the industry.

Continuing, on pages 42, 45 and 75, the CPUC has invoked Sections 0.457 (c) and (e). As the CPUC explained in its Request for Proprietary Treatment, these materials were furnished to the CPUC by the Attorney General of the State of California gathered in the course of its ongoing investigation of the cellular industry to determine compliance with antitrust laws. In particular, the Attorney General cited California Government Code Section 11181 for authority in providing these materials, deemed proprietary by the cellular industry, to another governmental agency. We have attached a copy of Section 11181 for your reference.

At the request of the state attorney general, the CPUC agreed to file any information obtained from these materials and included in the CPUC's petition under seal with the FCC. (See Letter from State Attorney General attached to Request for Proprietary Treatment.)

In addition to the above, at your request, the CPUC agreed to review its petition to ascertain whether certain material redacted therefrom was otherwise publicly available. On pages 53 and 59-60 we found that we had inadvertently redacted information about MCI's proposed investment in Nextel (which has since been withdrawn) and information obtained from an NTIA report. We have enclosed an original and eleven unredacted copies of these pages.

Moreover, the CPUC discovered in its review that the pricing data redacted from pages 34-35, 41-45, 49 and Appendices I and J, and furnished to the CPUC under a request for confidentiality by the cellular industry, was in fact fully derived from tariffs


Regina Harrison
September 13, 1994
Page 3

publicly filed with the CPUC.[1] The CPUC made this discovery by analyzing the data provided by the industry with the publicly-filed tariffs.[2]

The CPUC administrative law judge's ruling specifically provides that rate information derived from publicly available tariff data shall not be subject to confidential treatment. (ALJ Ruling at 3, I. 93-12-007, dated July 15, 1994). Accordingly, the CPUC hereby encloses an original and eleven unredacted copies of the pages and appendices in its petition which were derived from publicly-filed tariffs.

Please call me if you require any additional information or have any questions.

Sincerely,



Ellen S. LeVine
Principal Counsel

ESL:bjk

Attachments

1 The CPUC initially believed that some of the data provided by the cellular industry was proprietary.

2 In analyzing the data submitted by the industry with that contained in the public tariffs, the CPUC noted a number of errors made by the industry. Accordingly, the CPUC corrected its study and appendices to reflect the correct data from the tariffs. The revisions, however, had no significant effect on the CPUC's conclusions about the non-competitiveness of the cellular industry in California.

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 26th day of September, 1994 a true and correct copy of the foregoing OPPOSITION OF CALIFORNIA TO MOTION TO REJECT PETITION OR, ALTERNATIVELY, REJECT REDACTED INFORMATION was mailed first class, postage prepaid to:

Michael B. Day
Michael J. Thompson
Jerome F. Candelaria
Wright & Talisman
Shell Building
100 Bush Street, Ste 225
San Francisco, CA 94104

A handwritten signature in black ink, appearing to read "Ellen S. LeVine", written over a horizontal line.

Ellen S. LeVine